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APPLICATION OF

CINCAP MARTINSVILLE, LLC

CASE NO. PUE-2001-00169

**For a certificate of public convenience
and necessity for electric generation
facilities in the City of Martinsville**

HEARING EXAMINER'S RULING

July 22, 2002

On April 29, 2002, a majority of the Commission remanded this case to the hearing examiner to receive additional evidence on the cumulative effect of the proposed project combined with other existing and proposed generation projects on existing air quality. The Applicant sought reconsideration of that order requesting the Commission to reverse its remand order, and grant CinCap authorization to construct, own, and operate the Facility in accordance with findings and recommendations in the Hearing Examiner Report dated January 21, 2002. On May 29, 2002, CinCap also appealed the Commission's order of April 29, 2002, to the Virginia Supreme Court.

The Commission issued an order on reconsideration on June 5, 2002. Therein the Commission after fully considering all of the arguments in the motion, denied CinCap's request to reverse the remand order, but clarified that the remand was limited to requiring evidence on the cumulative impacts on air quality.

The appeal is pending before the Virginia Supreme Court, but the remand order did not finally conclude this case. As discussed in the Applicant's pleadings and by the Commission in its orders, the 2002 General Assembly passed several amendments that became effective July 1, 2002, and that may now be applicable to the scope of the review in this case on remand. Specifically, Virginia Code §§ 56-46.1 and 56-580 D were amended to include the following language:

In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were considered by, the governmental

entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters.

The Commission recently issued an order in which it noted that:

. . . effective July 1, 2002, §56-46.1 A provides, among other things, that permits regulating environmental impact and mitigation of adverse environmental impact shall be deemed to satisfy the requirements of such section with respect to all matters that are governed by the permit. ODEC filed a copy of its Stationary Source permit to Construct and Operate issued by the DEQ, which governs air emissions by the proposed facilities.¹

In his concurring opinion in that case, Judge Moore also stated:

I concur with my colleagues in the decision to approve the construction and operation of the ODEC facility. I do so because the Applicant has been issued a permit by the DEQ that governs certain emissions of the proposed facility. The permit is specific in addressing the matters that would cause me to deny the application without further data and analyses.²

The record already received in this case includes CinCap's application for an air permit filed with the Department of Environmental Quality ("DEQ") on April 26, 2001, but there is no evidence that the permit has ever been issued. It would appear that statutory changes now require the Commission to defer to the DEQ concerning the consideration of air emissions, which would include the determination of when a cumulative emissions analysis is warranted. I therefore find that the remand issue can be addressed and referred back to the Commission for a final order if the Applicant files a copy of its air permit. In the alternative, if an air permit has not yet been issued, the Applicant may file a cumulative analysis consistent with those analyses filed and considered by the Commission prior to July 1, 2002. Accordingly,

IT IS DIRECTED that CinCap file a copy of the air permit issued by the DEQ, or in the alternative, a cumulative analysis to show the impact of this facility combined with other existing and proposed electric generation facilities on the existing air quality in the City of Martinsville and the surrounding area. On or before August 5, 2002, CinCap should advise

¹ *Application of Old Dominion Electric Cooperative, For a certificate of public convenience and necessity for electric generation facilities in Louisa County*, Case No. PUE-2001-00303, Final Order dated July 17, 2002.

² *Id.* at 9.

the Commission if it intends to file a copy of the air permit or cumulative impact analysis, and when it expects to be prepared to make that filing.

Deborah V. Ellenberg
Chief Hearing Examiner